APR 5 1973

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-1023

CURTIS THOMAS,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF *CERTIORARI* TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

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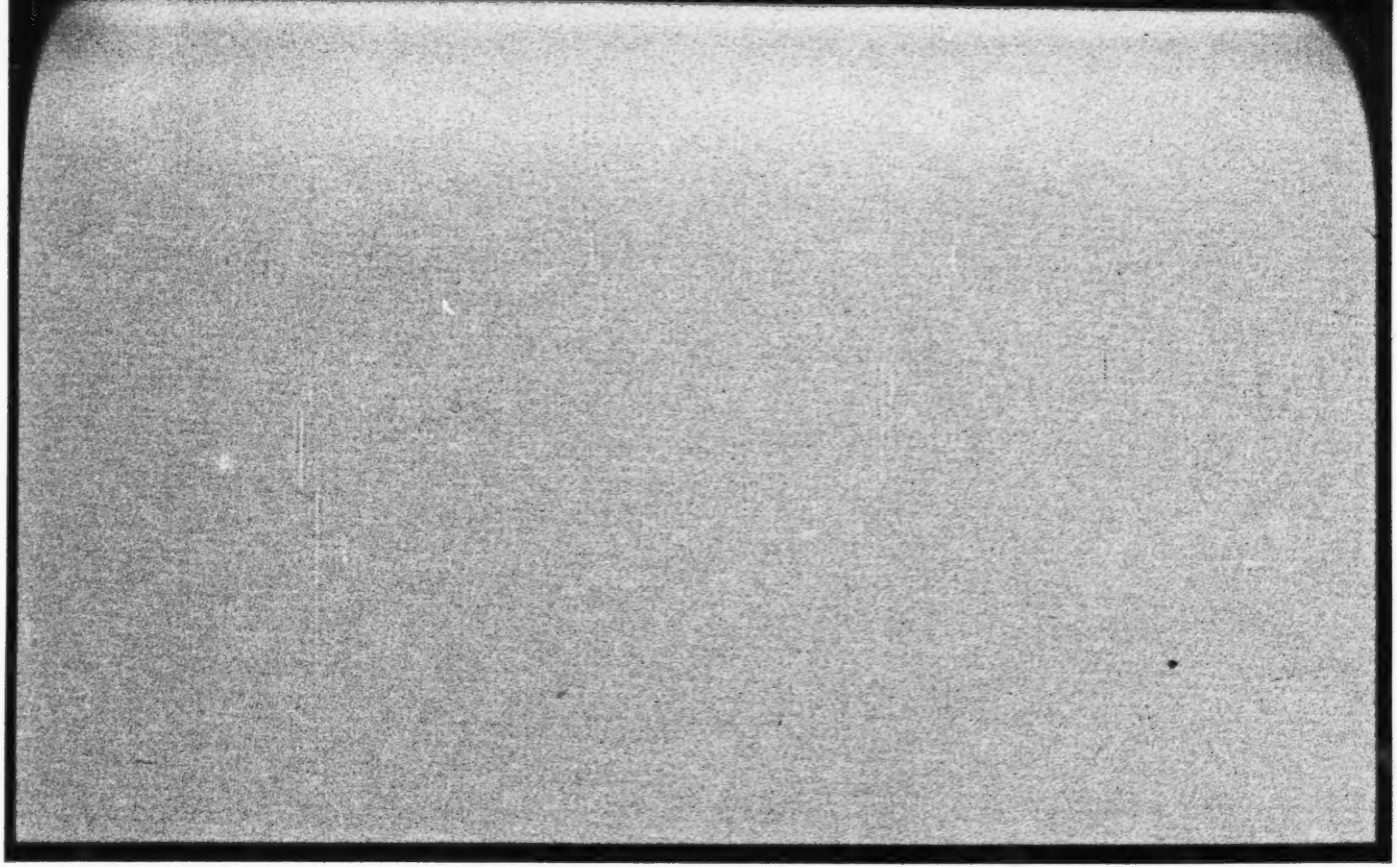

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The respondent, the State of Washington, respectfully urges that a Writ of Certiorari be denied with respect to the Judgment and Opinion of the Court of Appeals of the State of Washington, Division I, in that Court's Docket No. 879-I, which opinion affirmed appellant's conviction of grand larceny.

I.

STATEMENT OF THE CASE

A. Additional Factual Background

The respondent would join with petitioner's statement with some exception. The petitioner implies through omission of relevant facts that the petitioner was taken into custody and his vehicle impounded on the basis of a speeding violation for going 45 mph in a 30 mph zone. This is

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not the case. The initial contact with the petitioner was due to the traffic violation observed by the officers. If there had been nothing more, a citation would have been issued and the petitioner left free to continue on his way.

In this case, upon stopping the petitioner, the officers made a routine check of the petitioner's name through police radio and determined that the appellant had *several outstanding traffic warrants* for his arrest due to failure to honor previous traffic citations (St. 3-5). It was on the basis of these valid warrants of arrest, *not* the original speeding citation, that the officers were *required* to take the petitioner into custody (See Affidavit of Ross Carmen, Appendix G, pages A-12 to A-13, petitioner's brief). As the other passengers had no valid drivers licenses, and as the vehicle was stopped on a major thoroughfare, regular police procedures were to impound and inventory the vehicle.

II.

REASONS FOR DENYING THE WRIT

A. Vehicle Impounds, and Inventories Made Pursuant to Such Impounds, Are Not, Without Additional Factors, Unreasonable Searches as Prohibited by the Fourth Amendment

Petitioner incorrectly cites *Coolidge v. New Hampshire*, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (June 21, 1971) as being "nearly on all fours factually and legally with the case at bar" (Petitioner's br. p. 7). In *Coolidge*, the search was for evidence of a felony, to-wit: murder, as a result of an investigation covering an extended period of time. At the time the search for this evidence occurred, the vehicle in question was parked in the defendant's driveway. In *Coolidge*, the court first determined that a search warrant obtained to search the vehicle for evidence

of the felony was invalid. After making that determination, the court discussed and rejected three possible theories of searching the vehicle for evidence of a crime; (1) as "incident" to a valid arrest; (2) as the result of probable cause to believe the vehicle contained contraband; and (3) as an instrumentality of a crime. The court never considered or dealt with the issue of impounds and inventories pursuant to such impounds. This is because the factual pattern of *Coolidge* clearly indicated a *search for evidence of a crime* when there was more than ample time prior to the search to obtain a warrant.

In this case, petitioner Thomas was stopped for speeding, not as the result of any crime investigation. The petitioner was arrested and booked as the result of outstanding traffic warrants for his arrest. The officers had no option but to arrest the petitioner upon learning of the warrants. Furthermore, the vehicle was stopped on a thoroughfare and it was necessary to remove the vehicle. Pursuant to that impound, an inventory was made of the contents of the vehicle prior to its being placed in the impound lot for safe keeping.

In an impound inventory, the officer is not searching for evidence of a crime. Rather, he is merely listing the valuables content of the vehicle pursuant to the impound so that any valuable property can be noted for protection, and so that the police department can be protected at a later time from claims of loss. In these situations, the inventory is not a *search* as envisioned by the Fourth Amendment. A search warrant prior to such an inventory would make no sense as one would not be in a position to specify what was being sought.

The Federal Courts have spoken on this issue since the

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Coolidge decision. In *United States v. Mitchell*, 458 F.2d 960 (9th CA, April, 1972), the United States District Court for the District of Montana, Billings Division, entered an order suppressing evidence and the government appealed. Factually, the defendant was an out-of-state motorist arrested on a speeding citation. Unable to raise the bail, he was confined to the city jail to await appearance in municipal court and pursuant to that arrest, his vehicle was impounded and inventoried. In reversing the order suppressing evidence, the court in *Mitchell* had this to say:

> The first issue is whether the actions of the patrolman were a search within the ambit of the Fourth Amednment. We note that there was no intent to discover evidence of crime. Rather this was responsible, indeed laudable, police conduct to protect the property of the owner of a lawfully impounded car. If valuable property had been left on the seat and floor of the car, plainly visible to anyone peering through the window, the danger of theft would have been substantial. Not surprisingly, it appears that the locking and securing of impounded cars, and the removal and inventory of valuable property in plain sight, are standard procedures. They certainly should be.
>
> These procedures protect not only the interests of the property owner but also those of the city against a claim that property in the car at the time of impounding "mysteriously disappeared" while the car was in the custody of the authorities.

Supra at 961. See also *Harris v. United States*, 390 U.S. 234, 88 S. Ct. 992, 19 L. Ed. 2d 1067 (1968); *United States v. Edwards*, 441 F.2d 749 (5th CA, April 1971); *United States v. Pennington*, 441 F.2d 249 (5th CA, April 1971).

Furthermore, the United States Supreme Court has, since the *Coolidge* decision, considered and denied certiorari on the inventory impound question. *Cabbler v. Virginia*, 184

S.E.2d 781 (S. Ct. of Va., Nov. 1971); *cert. den.* 405 U.S. 1073, 92 S. Ct. 1501, 31 L. Ed. 2d 807. In *Cabbler*, the court held the following:

> The Fourth Amendment does no preclude the states from developing workable rules governing arrests, searches and seizures to meet the practical demands of effective criminal investigation and law enforcement in the states, provided that those rules do not violate the constitutional proscription of unreasonable searches and seizures and the concomitant command that evidence illegally seized is inadmissible. *Ker v. California*, 374 U.S. 23, 34, 83 S. Ct. 1623, 10 L. Ed. 2d 726 (1963); *Sibron v. New York*, 392 U.S. 40, 60-61, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968).
>
> Upon the facts before us we hold that the policy established by the Roanoke Police Department and the procedure followed in connection therewith are such reasonable rules governing arrests as were contemplated in *Ker* and *Sibron*. Such a policy is in accord with the public policy of the Commonwealth, is not violative of the defendant's Fourth Amendment rights and serves the best interest of the property owner by protecting and safeguarding the property in his possession at the time of his arrest.

Supra at 783.

There being no legal issues for the court to decide in the instant case, appellant's petition for certiorari should be denied.

III.

CONCLUSION

For the above-stated reasons, petitioner's conviction should stand and his petition of Writ of Certiorari should be denied.

Respectfully Submitted,

CHRISTOPHER T. BAYLEY
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Attorney for Respondent

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